# In the Supreme Court of the United States

OCTOBER TERM, 1925

No. [redacted] 174

CARL FRANZ ADOLF OTTO ISENBOHL,
*Petitioner,*

vs.

WALTER E. OLSEN & CO., INC.,
*Respondent.*

## NOTICE OF MOTION AND MOTION TO DISMISS PETITION FOR WRIT OF CERTIORARI WITH BRIEF IN SUPPORT OF MOTION

ALLISON D. GIBBS,
*Counsel for Respondent,*
*309 Rosas Bldg., Manila, P. I.*

McCullough Printing Company

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*Respondent.*

## NOTICE OF MOTION TO DISMISS PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

TO THE PETITIONER ABOVE NAMED AND HIS ATTORNEYS:

Please take notice that on the 5th day of October, 1925, at the opening of the Court on that day, or as soon thereafter as counsel may be heard, Walter E. Olsen & Co., Inc., respondent herein will, upon the entire record in this cause, submit a motion to dismiss the petition for a writ of certiorari, a copy of which and brief in support thereof are herewith delivered to you, to the Supreme Court of the United

States in the court room at the Capitol in the City of Washington in the District of Columbia.

Dated at Manila, P. I., this 18th day of August, 1925.

ALLISON D. GIBBS,
*Counsel for Respondent.*
*302 Roxas Bldg., Manila, P. I.*

The foregoing notice is hereby accepted and service of a copy thereof and of the motion and brief therein mentioned is hereby accepted this .... day of ....., 1925.

.....
*Counsel for Petitioner.*

# In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 614

CARL FRANZ ADOLF OTTO INGENOHL,
*Petitioner,*

*vs.*

WALTER E. OLSEN & CO., INC.,
*Respondent.*

## MOTION TO DISMISS PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

TO THE HONORABLE, THE CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Now comes Walter E. Olsen & Co., Inc., respondent, and moves this Honorable Court to dismiss the petition in the above entitled action for the following reasons:

*1st.* Because the amount in dispute does not exceed $25,000.00 United States currency and neither the Constitution nor any statute or treaty of the United States is involved and this Court is therefore without jurisdiction to entertain the petition.

*2nd.* Because aside from the fact that this Court is without jurisdiction, the petition is without merit.

Dated at Manila, P. I., this 18th day of August, 1925.

ALLISON D. GIBBS,
*Counsel for Respondent.*
*302 Roxas Bldg., Manila, P. I.*

# In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 614

CARL FRANZ ADOLF OTTO INGENOHL,
*Petitioner,*

*vs.*

WALTER E. OLSEN & CO., INC.,
*Respondent.*

## BRIEF IN SUPPORT OF MOTION TO DISMISS PETITION FOR WRIT OF CERTIORARI

(All italics ours)

### FIRST GROUND OF MOTION

The amount in dispute does not exceed $25,000.00 United States currency and neither the Constitution nor any statute or treaty of the United States is involved and this Court is therefore without jurisdiction to entertain the petition.

The fallacy of petitioner's contention as to this Court's jurisdiction is disclosed in counsel's statement as follows:

> "It appears from the answer filed by the respondent here that the value of the trade marks in question in China is one million pesos, and likewise it appears by affidavit of a competent witness made a part

of the record here that the value of these trade marks in Hongkong (the value in controversy) exceeds $25,000. The case is one, therefore, which it is competent for this Court to certify to itself for review and determination. Jurisdiction may likewise be entertained by this Court upon the ground that Section 311 of the Code of Civil Procedure of the Philippine Islands conflicts with a right or privilege of the United States."

(Pages 9 and 10, Petition for Writ of Certiorari.)

The only matter in issue under petitioner's complaint as plaintiff in the action against respondent in the courts of the Philippine Islands was the costs amounting to the equivalent of P31,099.41, Philippine currency, for which the Hongkong Supreme Court rendered judgment against the respondent. (See copy of complaint, pages 2 to 4, printed record.)

The counterclaim of respondent as defendant in the action was finally dismissed. Therefore, the amount involved in these proceedings is less than $16,000.00 U. S. currency.

It is true that the Supreme Court of the Philippine Islands found that the defendant (respondent) "has the absolute title and right to all of the trade marks in question and to their exclusive use and enjoyment, not only in the Philippine Islands, but in all other countries where they are duly registered * * *," but this was obviously a mere finding of fact as one of the grounds or reasons for revoking the judgment of the trial court. The value in controversy necessary to give this Honorable Court jurisdiction must be either an amount claimed by the petitioner as plaintiff in the court below, or an amount or value for which judgment was rendered by the Supreme Court of the Philippines. The sole amount claimed by petitioner as plaintiff in the court below, as previously stated, was less than $16,000.00 U. S. currency. The sole judgment rendered by the Supreme

Court was the revocation of the judgment of the trial court of the Philippine Islands in favor of the petitioner as plaintiff against the respondent as defendant for a sum less than $16,000.00 U. S. currency and the affirmance of that part of the judgment of the trial court which dismissed the counterclaim of the respondent as defendant in the court below. The judgment of the Supreme Court of the Philippines neither granted to nor took away from the respondent as defendant in the court below its ownership of the trade marks and trade names. The only effect of the judgment was to support respondent's defense as defendant in the court below that the decision of the Supreme Court of Hongkong was a clear mistake of law and fact by reason of the circumstance that respondent had acquired title to such trade marks and trade names by virtue of the deed of the alien property custodian of the United States. The decision in the Supreme Court of the Philippines does not purport to render judgment in favor of respondent as defendant in the court below for the trade marks and trade names, but only to find as a matter of fact and law that respondent had acquired the same by virtue of the deed mentioned. No judgment by the Supreme Court of the Philippines could have been legally rendered in favor of the respondent as defendant in the court below and against the petitioner as plaintiff in the court below for the trade marks and trade names in question because no such issue was raised in the pleadings and there was no prayer in respondent's answer as defendant in the court below for any such relief.

It is also true as stated by counsel in his petition for certiorari that "it appears from the answer filed by the respondent herein that the value of the trade marks in question in China is one million pesos and likewise it appears by affidavit of a competent witness made a part of the record here that the value of these trade marks in Hongkong * * * exceeds $25,000.00" (page 9, Petition for Certio-

rari), but counsel's deduction that the value in controversy is thereby established to be in excess of $25,000.00 is wholly without justification.

Aside from the value of the opinion of the Honorable Supreme Court of the Philippines as expressed in its finding of fact that the respondent as defendant in the court below was owner of the trade marks and trade names, that finding granted nothing of value to respondent in the Colony of Hongkong, in China, the Straits Settlements or any other foreign jurisdiction for the reason that the judgment of the Supreme Court of the Philippines could not and can not be enforced in such foreign jurisdictions.

Petitioner does not dispute the respondent's exclusive right to the use of the trade marks in the Philippines.

The affidavit of H. Sieling as to the amount involved in dispute (pages 29-30, inclusive, petition for writ of certiorari and brief in support thereof) is limited to the value of the trade marks in the Colony of Hongkong. Needless to say the judgment of the Hongkong Supreme Court enjoining the respondent from using the trade marks in that colony is still in full force and effect, notwithstanding the decision of the Supreme Court of the Philippine Islands. It may be added that the same condition prevails in the Straits Settlements and other oriental countries dominated by the British Government.

In China and particularly in Shanghai where each citizen is entitled to be sued, if at all, before a court of his own country, the petitioner, recognizing the fact that no litigation either in the Colony of Hongkong or in the Philippines could determine his right to the use of the trade marks in question in Shanghai or elsewhere in China, about a year ago brought an action before the British Court of Shanghai against certain British subjects who were acting as distributors of the cigars in China for respondent. The Honorable Judge, Sir Skinner Turner of the Supreme Court

of Shanghai, overruling the judgment of the Supreme Court of Hongkong, rendered judgment in favor of the distributors of the respondent and against the petitioner. Referring to the litigation both in Hongkong and Manila, Judge Turner said:

> "In one aspect or another of the dispute, the parties have been before the Supreme Court in Hongkong and the Courts (including the Appeal Court) in Manila, and differences of judicial opinion have been shown. The case in Hongkong is reported in 17, Hongkong L. R. 4, (1922), and that judgment is now final: in Manila the Court of Appeal decision has been made (Exhibit "S") in this case, and I am told it is under a further appeal. Of course neither of these decisions is binding upon this Court, but both are to be treated with that respect and courtesy which is always shown to the judgments of a foreign Court of competent jurisdiction." (See Appendix "A".)

Even if by any interpretation the judgment of the Supreme Court of the Philippines could be held to be a judgment granting the respondent the right to use the trade marks in question in the United States, there is no evidence that any cigars have ever been sold in the United States by either the petitioner or the respondent under those trade marks, and if there were such evidence, it would be necessary for the petitioner to further establish by affidavit that the value of the use of those trade marks in the United States is in excess of $25,000.00 U. S. currency, or rather that the value of their use would, in addition to the amount sued for by petitioner as plaintiff in the court below, amount to a sufficient sum to make up a total of the jurisdictional amount.

Counsel for petitioner advises this Honorable Court in effect that if it be unable to agree with him that the value in controversy exceeds $25,000.00 U. S. currency, juris-

diction may nevertheless be entertained "upon the ground that Section 311 of the Code of Civil Procedure of the Philippines conflicts with a right or privilege of the United States." (Pages 9-10, Petition for Certiorari.) Counsel for petitioner cites the dissenting opinion of two of the Justices of the Supreme Court of the Philippines, intimating that Section 311 of the Code of Civil Procedure might be held unconstitutional but is not willing to himself go on record as adopting or approving that part of the dissenting opinion. Counsel contents himself with a somewhat vague intimation that the doctrine of comity constitutes an international law and that Section 311 of the Code of Civil Procedure is in conflict with that alleged unwritten international law. Counsel says:

> "An international question, a question of international comity and a question of international law are involved."

But even if such were the case, it would not bring the petitioner within the requirements of the Act of Congress to give this Honorable Court jurisdiction. Such jurisdiction is granted only "wherein the Constitution or any statute or treaty of the United States is involved, or wherein the value in controversy exceeds $25,000.00, or wherein the title or possession of real estate exceeding in value the sum of $25,000.00 is involved or brought in question." By "statute or treaty of the United States" Congress meant a written statute or a written treaty. There is no contention that there is any such statute or treaty on the subject of foreign judgments in existence. Section 311 of the Code of Civil Procedure in no way conflicts with the Constitution or any statute or treaty of the United States. The Federal Government exercises no control over State Governments with reference to the faith or credit which shall be given to foreign judgments, and we believe that every

state in the Union has some statutory provision upon that subject which is applicable not only to the force and effect to be given judgments of the courts of other states, but also to the judgments of courts of foreign countries.

If any distinction can be drawn the Philippines are still more independent than the States in the enactment of such legislation as Section 311 of the Code of Civil Procedure. It is in effect the legislation of Congress through the Philippine Commission and must be presumed to have met with the approval of Congress. We quote from the syllabus of the opinion of the Supreme Court of the Philippines in the case of U. S. *v.* Bull as follows:

> "2. THE GOVERNMENT OF THE PHILIPPINE ISLANDS; NATURE AND CHARACTERISTICS.—The Government of the Philippine Islands is not that of a State or a Territory, although its form and organization somewhat resembles that of both. It stands outside of the constitutional relation which unites the States and Territories into the Union. The authority for its creation and maintenance is derived from the Constitution of the United States, which, however, operates on the President and Congress, and not on the inhabitants of the Philippines and the Philippine Government.
>
> "3. ID.; POWERS AND LIMITATIONS SOURCE OF ITS ORGANIC LAWS.—For its powers and the limitations thereon the Government of the Philippines looks to the orders of the President before Congress acted, and the Acts of Congress after it assumed control. Its organic laws are derived from the formally and legally expressed will of the President and Congress, instead of the sovereign constituency which lies back of American constitutions.

"4. ID.; A COMPLETE GOVERNMENTAL ORGANISM WITH THE USUAL DEPARTMENTS.—Within the limits of its authority the Government of the Philippines is a complete governmental organism with executive, legislative, and judicial departments exercising the functions commonly assigned to such departments.

"5. ID.; LEGISLATIVE POWER OF THE GOVERNMENT.—The legislative power delegated to the Government of the Philippines is granted in general terms, subject to specific limitations. The grant is not alone of power to legislate on certain subjects, but to exercise the legislative power subject to the restrictions stated.

"6. ID.; VALIDITY OF LEGISLATIVE ACTS. —An act of the legislative authority of the Philippine Government which has not been expressly disapproved by Congress is valid unless its subject-matter has been covered by Congressional legislation, or its enactment forbidden by some provision of the organic law.

"7. ID.; ID; RESERVATION BY CONGRESS OF POWER TO SUSPEND ACTS UNTIL APPROVED.—The reservation by Congress of the power to suspend valid Acts of the Philippine Commission and Legislature does not operate to suspend such Acts until approved by Congress, or when approved, expressly or by acquiescence, make them the laws of Congress. They are valid Acts of the Government of the Philippine Islands until annulled.

"8. ID.; ID.; POWER TO REGULATE FOREIGN COMMERCE.—The power to regulate foreign commerce is vested in Congress, and by virtue of its power to govern the territory belonging to the United States it may regulate foreign commerce with such

territory. It may do this directly, or indirectly through the legislative body created by it, to which its power in that respect is delegated. Congress has not, except in certain specific instances, legislated directly upon the subject, but, by the grant of general legislative power it has authorized the Government of the Philippines to enact laws with reference to matters not covered by the Acts of Congress, and report its action to Congress for approval or disapproval. The limitations upon the power of the Commission or Legislature to legislate do not affect the authority with respect to the regulation of commerce with foreign countries.

"9. ID.; ID.; ID.; ACT No. 55.—Act No. 55 was enacted before Congress took over the control of the Islands and was amended by Act No. 275 after the Spooner Amendment of March 2, 1901, was passed. The Military Government and the Civil Government instituted by the President had the power, whether it be called legislative or administrative, to regulate commerce between foreign countries and the ports of the territory. The Act passed in furtherance of this power has remained in force since its enactment, without annulment or other action by Congress, and must be presumed to have met with its approval.

"10. ID.; ID.; ID.; OFFICERS AND CREWS OF SHIPS IN TERRITORIAL WATERS.—When a foreign merchant ship enters territorial waters, the ship's officers and crew are subject to the jurisdiction of the territorial courts, subject to such limitations only as have been conceded by the territorial sovereign through the proper political agencies."

(U. S. *v.* Bull, 15 Phil., pages 7 and 8.)

The power to regulate foreign commerce is of greater moment than that to define the force and effect of foreign judgments.

Section 311 of the Code of Civil Procedure of the Philippines is a sensible salutary statute. It cannot be reasonably contended that any foreign judgment should be enforced where there has been "a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact."

## SECOND GROUND OF MOTION

Aside from the fact that this Court is without jurisdiction, the petition is without merit.

The reasons advanced by the Supreme Court of the Philippine Islands sufficiently justify the decision. The British Appellate Court for the Colony of Hongkong and for Shanghai consists of the Judges of the Hongkong and Shanghai Courts sitting together. The decision of the Supreme Court of the Colony of Hongkong was to the mind of the Judge of the Supreme Court of Shanghai such a clear mistake of law and fact that, upon the same issues and evidence, he found it necessary to overrule that decision and follow the decision of the Supreme Court of the Philippines. A copy of the decision of the Shanghai Court is hereinafter set forth as Appendix "A".

The facts are fully stated in an agreed statement of facts which was copied in full in the opinion of the Supreme Court of the Philippines. (Pages 346-361, printed record.)

The British Hongkong Court was manifestly misled by an erroneous interpretation of the decision of the celebrated cases which arose in England and the United States as a result of the expulsion from France of the Carthusian monks, and the confiscation by the French Government of the business establishment where they manufactured Chartreuse by a *secret process*. The French Government

represented by a judicial officer seized the establishment and claimed thereby to have become the owner of the goodwill and trade marks under which the monks had sold the output of their business, not only in France, but in foreign countries. The French Government naturally upheld its own action, insofar as French territory was concerned, but both the British and United States courts refused to recognize the right of the representative of the French Government to such good will and trade marks as against the Carthusian monks who carried their secret process with them from France to Spain, where they organized a Spanish company and again manufactured the genuine article and placed it on the market under its old trade marks previously registered by the monks in both countries. Why, we ask, did the British and United States Governments refuse to recognize the right of the French Government to the goodwill and trade marks formerly appropriated by the Carthusian monks to identify the Chartreuse manufactured by them? The answer is obvious. The public as the consumer of the Chartreuse was, as in all other cases, primarily concerned, and it would have been a fraud upon that consumer to have permitted the representative of the French Government to palm off his spurious article as the genuine Chartreuse, the secret process for the manufacture of which was possessed exclusively by the monks. The action of the British and United States courts was based upon the very principle relied upon by us in this case, that a trade mark cannot be disconnected from the genuine article for the identification of which it may have been appropriated and registered. The obvious difference between the principles of confiscation and sale involved in the Chartreuse cases and the case at bar is that the attempt of the French Government to become the successor of the monks in the manufacture of Chartreuse wholly failed for the reason that the genuine Chartreuse represented by the

goodwill, trade names and trade marks in question in those cases, could not be manufactured except by the secret process which was carried away by the monks and used in their new establishment, whereas, in the case at bar, the defendant by virtue of the sale and transfer of the Alien Property Custodian, as well as by the ratification of said sale by the plaintiff, not only became the owner of the very factory, for the identification of the output of which the trade marks in question were appropriated and registered in both Hongkong and Shanghai, but continued to manufacture and sell the only genuine Perla del Oriente, Cometa del Oriente, and Imperio del Mundo cigars; whereas, the plaintiff seeks to foist upon the public a spurious cigar manufactured by Chinese employees in the Hongkong Colony of such tobacco as he may see fit to use under the false representation that it is a genuine Philippine cigar manufactured in "El Oriente Fábrica de Tabacos." Every feature of the trade marks thus used by the petitioner is a false pretense as to the origin of the goods sold under them.

This Honorable Court will note that the Judge of the British Supreme Court of Shanghai agreed with our interpretation of the Chartreuse cases and found that they supported our contention rather than that of the petitioner. (See Appendix "A".)

The final determination in the case of Hilton *versus* Guyot 159 U. S. 95 and in Ritchie *versus* McMullen, 159 U. S. 235 cited by petitioner to the effect that the merits of a case once decided by a foreign court can not be reopened and retried as to the facts and law in no manner support petitioner's contention on the merits in the case at bar, because Section 311 of the Code of Civil Procedure clearly authorizes resistance of a foreign judgment on the ground of either a clear mistake of law or of fact, whereas no such provision was applicable to the Hilton and Ritchie cases

above mentioned. The second paragraph of the syllabus in the case of Hilton *v.* Guyot (*supra*) reads:

> "*Where there is no written law upon the subject, such as treaty or statute,* questions of international law must be determined by judicial decisions, the works of jurists, and the acts and usages of civilized nations."
>
> (Hilton *versus* Guyot, 159 U. S., page 95.)

In the case at bar Section 311 of the Code of Civil Procedure is a statute which expressly covers the subject and disposes of all the arguments of counsel for petitioner.

Counsel closes his brief for petitioner with the following question:

> "In conclusion it may perhaps be stated that the question presented here cannot be more clearly presented than by stating it thus: Assume that the English Government acting through an Alien Property Custodian, or similar officer under a statute similar to our Alien Property Law, had seized and sold the Hongkong factory of Ingenohl and the trade marks appurtenant to it as registered in the Colony of Hongkong, could the purchaser of the Manila business have restrained the purchaser of the Hongkong business from using the trade marks registered in Hongkong in that Colony? To put it a little more strikingly, could the purchaser of the Hongkong business and the trade marks appurtnant to it, as registered in the Colony of Hongkong, have come into a Court of the Philippine Islands and have successfully restrained the purchaser of the Manila business and the trade marks appurtenant to it, from using those trade marks in the Philippine Islands?"
>
> (Brief in support of Petition for Writ of Certiorari, pages 26 and 27.)

To the first question we reply that none of the trade marks in question were appurtenant to the Hongkong factory and that any purchaser of that factory could legally have been restrained by the respondent from the use in the Hongkong Colony of such trade marks on the output of the Hongkong factory after it ceased to be a branch of the Manila factory. To the second question we again reply that none of the trade marks in question were appurtenant to the Hongkong factory and that no purchaser of that factory could have legally restrained the respondent in the Philippine Courts from using such trade marks. The following among other reasons support our replies to the questions of counsel for the petitioner.

The trade marks and trade names in question were used exclusively from the year 1882 to 1908 on the output of the Manila factory known as "El Oriente, Fábrica de Tabacos" and owned first by "El Oriente, Fábrica de Tabacos, Sociedad Anónima," of which the petitioner Ingenohl was manager, and second by the "Syndicat Oriente," a joint account association operated in the name of the petitioner as its gerant.

Every distinguishing characteristic of the trade marks and labels from the Filipina girl in the center of "La Perla del Oriente" (paragraphs 11, 12 and 13 and Exhibits "E," "F," and "G" of the agreed statement of facts) to the Bridge of Spain, the Pasig River, Magallanes Monument, the stone wall, Dominican Church, Intendencia building and church towers of Intramuros in "El Cometa del Oriente" (par. 14 and Exhibit "H" agreed statement of facts), together with the wording below "La Perla del Oriente" (Exhibits "E" and "F" agreed statement of facts), and on the medals shown in Exhibits "G" and "H" agreed statement of facts, is symbolical of Manila, the Philippine Islands and the Filipino people, and emphasizes the origin and manufacture of the cigars in the Manila factory known as "El

Oriente, Fábrica de Tabacos, Manila." (Pages 143-157, printed record.)

In 1908 Ingenohl as gerant of "Syndicat Oriente" constructed a cigar factory in Hongkong in which he manufactured cigars partially from Philippine tobacco supplied by the Manila factory, and partially from wrapper imported from Java. Upon each and every box or package containing the output of the Hongkong factory, there appeared the words "El Oriente, Fábrica de Tabacos, Hongkong, *Sucursal de la Fábrica de Manila*," (branch of the Manila Factory), for the purpose of distinguishing such output from the product of the main factory at Manila, of which it was but a sucursal or branch, and presumably for the purpose of protecting patrons against deception in purchasing cigars manufactured in Hongkong by Chinese employees of material but part of which was furnished by the Manila factory, in the event such patrons should wish to purchase the genuine article manufactured in the Manila factory. (See paragraphs 17 and 18 and Exhibit "I" of the agreed statement of facts.)

There was no registration or appropriation of the trade marks for the identification of the output of the Hongkong factory, but on the contrary it appears from par. 21 of the agreed statement of facts and also from the decision of the Hongkong Court that the trade marks in question were assigned on the Hongkong registry as late as February, 1910, (2 years after the construction of the Hongkong factory) to the Syndicat Oriente under its style "El Oriente, Fábrica de Tabacos, C. Ingenohl, Manila." It further appears from par. 23 of the same agreed statement of facts that the registration of the trade marks was renewed on the Hongkong register in the same name by the petitioner on March 13, 1917, thereby again reappropriating and re-registering such trade marks for the identification of the output of the Manila factory. Had the intention of petitioner been

to appropriate the trade marks for the identification of the output of the Hongkong factory, he would have mentioned that factory as well as the Manila factory in the 1910 assignment and the 1917 renewal on the Hongkong registry.

For some unexplained reason the printed record which was forwarded by unregistered mail was not received by counsel for respondent until August 17th. We have, therefore, had scarcely enough time to glance through the printed record before preparing this motion. However, we call particular attention to the fact that the printed record is incomplete and misleading in that the labels or trade marks in dispute, which were attached to the agreed statement of facts, have not been reproduced in the printed record and the alleged description set out in lieu of proper copies or reproduction of such labels, which are Exhibits "E" to "I" inclusive of the agreed statement of facts, are incorrect and not in accordance with the body of the agreed statement of facts. For example, the description of Exhibit "H" (page 188, printed record) is as follows:

> "EXHIBIT 'H.' This exhibit is another facsimile of a trade mark or label. *It depicts a big bridge resembling the old Bridge of Spain across the Pasig River at Manila. In the back ground can be seen tops of buildings and towers.* Above are several stars and a comet, on the tail of which comet appear the words 'EL COMETA DEL ORIENTE.' Underneath are the obverse of three medals, a coat of arms, and the reverse of said three medals. (*See the corresponding page of the certified copy of this Transcript of Record.*)"

Paragraph 14 of the agreed statement of facts (page 149, printed record) describes Exhibit "H" as follows:

> "14.—Another facsimile of a Trade Mark and Trade Name also presented as evidence to the said

> Supreme Court of Hongkong *depicts the old Bridge of Spain across the Pasig River at Manila, showing in the back ground the Old Stone Wall of the Walled City, Manila, and the Dominican Church, Magallanes Monument, Intendencia Building and the Church Towers of the Walled City of Manila* and above several Stars and a Comet, on the Tail of which appear the words 'El Cometa del Oriente.' That a copy of said trade mark or label marked Exhibit 'H' is hereto attached and made a part hereof."

It will be noted that whereas the agreed statement of facts recites clearly and positively that the label "depicts the old Bridge of Spain across the Pasig River at Manila, showing in the back ground the Old Stone Wall of the Walled City, Manila, and the Dominican Church, Magallanes Monument, Intendencia Building and the Church Towers of the Walled City of Manila," the substituted description of Exhibit "H" above quoted says:

> "It depicts a big bridge resembling the old Bridge of Spain across the Pasig River at Manila. In the back ground can be seen tops of buildings and towers."

We respectfully submit that the petition should be dismissed, both for want of jurisdiction of this Honorable Court and for want of merit in petitioner's case.

Dated at Manila, P. I., this 18th day of August, 1925.

ALLISON D. GIBBS,
*Counsel for Respondent.*
*302 Roxas Bldg., Manila, P. I.*